

# IP in the Age of AI: A Chat With Former Patent Judge Kit Crumbley

Media Mentions

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Bracewell's **Kit Crumbley** sat down with *Legaltech News* for a Q&A to discuss how the Patent Trial and Appeal Board's (PTAB) strategy has evolved, the role of indemnifications in the age of artificial intelligence (AI) and how patent law may answer some of the questions around generative AI.

***Legaltech News:* After serving in the US Patent and Trademark Office, what perspective do you hope to bring Bracewell that can be valuable during this uncertain IP/AI time?**

**Crumbley:** I've been practicing IP law my entire career, which I guess is about 23 years now. But most of that has been within the government. ... For the last six or seven years of that, I was in the management of the PTAB ... I started to see a little bit of both the procedural framework that we use within the PTO start to evolve but then also a greater involvement in the policy side of things for the agency.

A lot of the change in IP these days I feel like is being driven by the PTO. There was a Supreme Court decision a couple years ago that gave the director of the patent office increased oversight over the PTAB ... and that has slowly started to roll out. As that has gone forward, it's something that I feel like there isn't as much knowledge outside of the agency about what that looks like for clients. ... Helping clients navigate both PTAB practice, but then also how that interplays with district court litigation, because a vast majority of times you have dual track proceedings in both the PTAB and the district court going at the same time, and how you navigate those requires a little bit of strategic thinking.

**As companies await clarity from regulatory bodies and courts alike on how AI affects IP law, how do you advise clients? Are there any actionable steps that can be taken during this time?**

## Related People

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The Copyright Office is working on a report, I believe they're up to like 9,000 public comments, last time I looked, on copyright and AI. ... One thing that people can do is get involved in that process early in this solicitation of comments period. I'm sure you're familiar with the executive order that recently went out, the patent office is specifically named [and] given a couple very short deadlines to do some things in there. ... Having seen the inside of the agency's workings, getting involved in that conversation early, whether it be through a request for comments or something like that is what has to be done just to get your voice heard.

**When it comes to the intersection of generative AI and IP, do you see any differences between what the government is focusing on versus what companies are asking for in terms of clarity?**

I think some of that remains to be seen, especially with that second deadline [given by the executive order] ... because that second deadline is very vague. It's just, the patent office can provide additional guidance on "other considerations at the intersection of AI and IP." .... Given the short timeline, I'm not sure what they're going to bite off. But I mean, there's all sorts of questions about open source with AI and the open source versus closed source model. There's issues of consumer protection. There's all these different things. ... I think the order is very good in that it sort of gives us direction and gets the apparatus of the federal government moving toward giving us some certainty on at least what the high-profile questions are right now.

Even the questions outside the regulatory sphere, patent prosecutors using AI to draft patent applications, what level of involvement is OK with that? ... Sorting through it as we go on is the greatest challenge that we face going forward.